ODOT Office of Civil Rights DBE Program

*Improving Understanding, Function and Procedural DBE Compliance*

ODOT Certified Local Public Agencies Training
Presented by: ODOT Office of Civil Rights
February 27, 2020
ODOT DBE Program Purpose

The Oregon Department of Transportation is committed to a Civil Rights Program to encourage the participation of Disadvantaged Business Enterprises (DBE's) in contracting opportunities.
Disadvantaged Business Enterprise (DBE) Program Components

- ODOT Office of Civil Rights monitors and reports program compliance

- DBE Program required on all Federally funded projects
Policy Statement

ODOT’s Director’s Office sets DBE Policy with intent to ensure:

- Non-discrimination on the basis of race, color, sex, disability or national origin
- Narrowly tailored program
- Level playing field for DBEs to compete
- Only eligible firms participate
- Help remove contracting barriers
- Assist in development of firms to compete outside the DBE program

The DBE program is given the same priority as compliance with all other equal obligations incurred by ODOT under USDOT agreements.
DBE Program Goals

ODOT Overall Annual Goal
• Annual Goal 15.37%
• Disparity Studies
• Race-conscious
• Race-neutral

ODOT Individual Contract Goals
• Prime must commit sufficient work to DBE subcontractors to meet the goal
A&E Contracts
Consultant Selection Goals

LPA A&E Requirements Guide
vsn 2/6/20
Section 3.4.1
page 9

• Set DBE goal before release of RFP

• DBE goal questions for A&E contracts go to:
  ocr.psk@odot.state.or.us

• Include ODOT Liaison on all Civil Rights communications
A&E Goal Standards

For any contract that includes $1 or more of FHWA funding:

0% Goal –
If any of the following applies:
- Under $100,000 (includes any anticipated amendments)
- Single discipline contracts, any $ amount

Emergency Repair (ER) contracts to restore essential travel, minimize damage, or protect the remaining facilities

8.5% Goal –
If any of the following applies:
- $100,000 or more AND includes 5 or more disciplines
- Goal Exception Request - For phased projects, contact OCR Personal Services Contracts
- To request a different goal, submit the **DBE Goal Calculation Worksheet**

3% Goal –
If any of the following applies:
- $100,000 or more AND includes 2-4 disciplines

Goal Exception Request –
If any of the following applies:
- For phased projects, contact OCR Personal Services Contracts
- To request a different goal, submit the **DBE Goal Calculation Worksheet**
Consultant Solicitation

• Include the DBE “Goal” or “No-Goal” in the solicitation (if applicable) and contract

• Ensure contract and solicitation documents include the applicable “Goal” or “No-Goal” DBE provisions are included in Contract provisions and templates

• Once the project has been awarded, email the Execution Notice to the OCR PSK mailbox (ocr.psk@odot.state.or.us) within 3 days of contract award

• Email a copy of all amendments that include FHWA funding (this includes “Goal” and “No-Goal” contracts) to: ocr.psk@odot.state.or.us
Required DBE Forms for A&E Projects

Committed DBE Breakdown

• Submit prior to contract execution to OCR
• Goal greater than “0”
• Complete form for each DBE subcontractor
• “cc” ODOT Liaison & LPA

Paid Summary Reports

• Complete form for each payment period (payments made to subs from previous Agency payment)
• Report on all projects regardless of goals
• Include all subs, DBE or not

Submit Forms to: odot.psk@odot.state.or.us
Construction Contracts
Pre-Construction Timeline

- Goal Setting
- Bid Book Review
- Bid Notification
- SSUR Submissions
- DBE Commitment Certification Review and DBE Goal Results Report
- Committed DBE Breakdown Review
- Award Notification *(Contract number)*
- Pre-Con Letters
Construction Goal Request Process
LAG Manual Section C, Chapter 8, pages C-111 through C-112

LPA submits to OCR and cc’s the ODOT LAL at Advance (90%) PS&E:

- Civil Rights Request for Goals (Form 731-0663, aka “yellow sheet”)
- Engineer’s estimate
- Construction schedule
- Submit to: OCRGoalsRequest@odot.state.or.us
- LPA shall provide at least five business days for processing goal requests
OCR issues the assigned construction contract DBE goals, EEO aspirational targets and/or OJT training hours

- OCR will issue the goals to the LPA and copy the ODOT LAL
- The LPA shall publish the civil rights goals in the bid book
- The LPA shall not modify ODOT’s assigned goals nor set its own goals for either civil rights or affirmative action
- This is an FHWA stipulation
- Goal expiration – 90 days *(Resubmit updated documents to OCR for review)*
Bid Book – Civil Rights Provisions

See *LAG Manual, Chapter C, Section 8, Pages C-112 through C-115*

- LPA submits final PS&E package to LAL for review
- LAL will forward to OCR and cc LPA for approval of civil rights provisions
- **Do not revise** the ODOT civil rights provisions or forms
- LPA must keep the ODOT footer intact
- OCR will respond to LAL and LPA with approval or correction notice
- Exclude State/Local civil rights provisions on federally funded projects
Bidding Phase

**Note:** The mandatory pre-bid meeting provides a forum for the LPA to explain the civil rights processes to prospective bidders. The ODOT LAL and ODOT Regional Field Coordinator should be invited to attend to answer pre-bid questions from contractors who may be unfamiliar with ODOT civil rights program requirements.

**Advertised Bid Date**

Date the project is advertised and bidding opens

**Bid Opening (Actual Bid Date)**

Date contractor bids are actually opened and bidding closes

OCR Bid Notification Form 734-2848 Refers to this as “Bid Close”
DBE Commitment Certification & Utilization
Form 734-2785

• Submitted with bid packet
• Good Faith Efforts must be included
• OCR will review within 3 days
• DBE Goal Results Report Created by OCR & sent to LPA

• Bidders who do not meet the goal are considered non-responsive
• LPA must not execute the contract until OCR confirms bidder responsiveness
• SSUR Forms due within 10 days of bid “opening” (‘0%’ goals also apply)
Administrative Reconsideration

Special Provision BB35_DBE_Commit_REQ, pages 11-12

• LPA will send non-responsive notice to low bidder within 15 days of bid opening

• OCR will provide the LPA specific language for the non-responsive letter

• Bidder has 4 days to request administrative reconsideration and provide support documentation

• Bidder has opportunity to meet review committee in person

• Review Committee has 4 days to make decision.

• Committee will notify bidder within 5 calendar days

• ODOT Procurement Office officiates hearings
Committed DBE Breakdown & Certification
Form 734-2531

Contract Intent to Award

- Due to OCR within 10 calendar days of Notice of Intent to Award
- LPA must not execute contract until OCR confirms DBE commitment
- OCR to review form(s) and respond to LPA within 3 days
Award Notice & PreCon Letters

- Award Notification Form 734-2849 due to OCR
- PreCon letters sent by OCR to LPA within 3 days of Award Notice
- Include PreCon Letters and approved Committed DBE Breakdowns in packet for Prime
- Relay Contract Number to OCR
Construction Phase
Construction Phase

Changes or Termination of DBE’s

CUF Reviews

Monthly Paid Summary Reports (PSR’s)
DBE Work Plan Proposal

Required from all DBE subcontractors prior to DBE starting work

• Tells us how the DBE will perform work – include details
• Opportunity to identify and head off potential CUF and crediting issues
• Identify potential CUF issues and provide feedback to Prime & DBE
• Try to correct problems before they happen
• Baseline to compare CUF Review - Form 3B
CUF Reviews

- Match up work performed with stated work in DBE Certification Form and subcontract
- Have conversation with DBEs
- Be familiar with DBE workers and equipment
- Inspect during peak construction activity
- Complete DBE CUF Form 3B (for each 12 month period)
- PM reviews
- FC reviews
DBE Firms Must Maintain

Operational Control
- Experience in the industry
- Independently make basic decisions about daily operations
- Technical competence in the industry

Managerial Control
- Power to hire/fire
- Make independent and unilateral decisions to guide business
- Contracted management is sufficient if ultimate decision on contracted managers rests in the business
- Inability to Bind S&E firms
A DBE does NOT perform a CUF if
It is merely an extra participant in a transaction, contract, or project through which funds are passed to obtain the appearance of DBE participation.
The lease must indicate that the DBE has exclusive use of and control over the truck.

Lease gives the DBE absolute priority for use of the leased truck.

Leased trucks must display the name and identification number of the DBE.

Owner/operator requirements also apply.

Lease Must Indicate: Lessors Names, List of Trucks to be Leased, VIN, Agreed Upon Amount of the Cost and Method of Payment.
Prompt Payment

• Subs are paid within 10 days of CLPA payment to Prime

• All forms and other payments must be complete

• Applies to all subcontractors (DBE or non-DBE)
Paid Summary Reports (PSRs)

• DBE Regulations require ODOT to monitor and ensure prompt payment to all subcontractors

• ODOT required to report DBE/MWESB utilization and payment to:
  1) FHWA
  2) Governor’s Office
  3) Legislature
Monthly Paid Summary Reports

Prime submits monthly Paid Summary Report Forms for all Subcontractors within 20 days

OCR uploads payment data into Payment Tracking System

ODOT send Uniform Report of DBE Commitments, Awards & Payments to FHWA
Paid Summary Report - Requirements

• **Required for all projects** – with **and** without DBE goals

• **Required from prime and subcontractors at every tier**
  Certifying payments made to each of the following:
  1) all subcontractors
  2) committed DBE suppliers
  3) non-committed DBE suppliers and service providers
     with estimated total payments for the project over
     $10,000

• **Committed DBE trucking firms** - Submit Paid Summary
  Reports showing payments to the firms for leased trucks
The purpose of this form is to

1. Track DBE participation
2. Verify prompt payments to subs

### Contractor and contract information

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Prime Contractor Supreme Inc</td>
<td>00</td>
<td>15121</td>
<td>Big Bridge Project</td>
<td>20191031</td>
<td>New</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>

### Subcontractor/subconsultant paid

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Flaggers R Us</td>
<td>01</td>
<td>$20,000.00</td>
<td>$12,000.00</td>
<td>$6,000.00</td>
<td>20191015</td>
<td>$12,000.00</td>
<td>$0.00</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Concrete Destroyers Inc</td>
<td>02</td>
<td>$50,000.00</td>
<td>$0.00</td>
<td>$1,000.00</td>
<td>20191015</td>
<td>$45,000.00</td>
<td>$0.00</td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Perfect Landscaping LLC</td>
<td>03</td>
<td>$10,000.00</td>
<td>$8,000.00</td>
<td>$500.00</td>
<td>20191015</td>
<td>$6,000.00</td>
<td>$2,000.00</td>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Submission

By entering my name in the signature block(s) below, I certify that the information contained in this report is true and accurate to the best of my knowledge, and that I am authorized to submit this report on behalf of this firm. I further agree that typing my name in the signature box and submitting this report using a password-protected e-mail account is the equivalent of a manual signature for the purposes of this form.

<table>
<thead>
<tr>
<th>21. NAME OF PERSON SUBMITTING REPORT</th>
<th>22. TITLE</th>
<th>23. PHONE</th>
<th>24. DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uma Thurman</td>
<td>Controller</td>
<td>555-333-4444</td>
<td>20191105</td>
</tr>
</tbody>
</table>
Changes, Subcontracts & Terminations

- Prime makes written request of permission to LPA PM prior to any actions occurring
- Prime provides written notice to DBE of intent to terminate/replace
- PM communicates with OCR
- Approval from OCR required prior to action

A Prime self-performing DBE-committed work is considered partial termination
Equal Employment Opportunity (EEO)
Equal Employment Opportunity

Ensures equal employment opportunity to all individuals regardless of:

- Race
- Religion
- Sex
- Color
- National Origin
- Age
- Disability
Equal Employment Opportunity is **THE LAW**

Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

**RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN**

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee’s religious practices where the accommodation does not impose undue hardship.

**DISABILITY**

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

**AGE**

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

**SEX (WAGES)**

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

**GENETICS**

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers’ acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

**RETAILATION**

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

**WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED**

There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected.

The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at www.eeoc.gov or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at www.eeoc.gov.
Equal Employment Opportunity

- Ensure EEO is applied to all conditions of employment, including hiring, layoff, transfer, and training/advancement opportunities
- Investigate allegations of discrimination
- Annual EEO Report
- Electronic Monthly Employment Utilization Reports (MEURS)
- EEO Reviews on External Contracts
EEO Annual Reporting Form PR-1391

• Annual reporting required for all Contracts and Subcontracts of $10,000 or more

• ODOT Office of Civil Rights will notify qualifying contractors each July

• Submit electronically

• Submit at the August deadline

• Data is reported to FHWA

• Form: http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/forms/html
Monthly Employment Utilization Report (MEUR)

- Per contract, submit MEURs monthly for all **contractors** and **subcontractors** that require certified payrolls
- Due **every** month, from the first month to last month of work, **even if work was not performed**
- **Data is reported to FHWA**
MONTHLY EMPLOYMENT UTILIZATION REPORT

This report is due monthly. Refer to the project contract for the recurring monthly due date.

Please read instructions before completing this form. If no work was performed during the reporting period, complete only items 1-14 and 29-33. If work was performed during the reporting period, complete items 15-26 as well.

<table>
<thead>
<tr>
<th>1. CONTRACTOR NAME</th>
<th>2. SUBCONTRACTOR TO</th>
<th>3. ODOT CONTRACT NO.</th>
<th>4. SUBCONTRACT ID</th>
<th>5. REPORT FOR MONTH / YEAR</th>
<th>6. NEW / REVISED</th>
<th>FINAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>XXXX</td>
<td>XXXX</td>
<td>XXXX</td>
<td>09B</td>
<td>2017/1</td>
<td>New</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>7. ADDRESS</th>
<th>8. PHONE</th>
<th>9. COUNTY IN WHICH WORK WAS PERFORMED</th>
</tr>
</thead>
<tbody>
<tr>
<td>XXXX</td>
<td></td>
<td>Clackamas</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>XXXX</td>
<td>XX</td>
<td>XXXX</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>14. No work performed this month</th>
<th></th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Vincent</td>
<td>Shawn</td>
<td>E</td>
<td>2575</td>
<td>Salem</td>
<td>97302</td>
<td>H - Hispanic</td>
<td>Male</td>
<td>Cable Splicer</td>
<td>Journey Work</td>
<td>0.75</td>
<td>$44.22</td>
<td>X</td>
</tr>
<tr>
<td>Elliott-Heidrick</td>
<td>Kody</td>
<td>I</td>
<td>2422</td>
<td>Salem</td>
<td>97303</td>
<td>CA - Caucasian (WI)</td>
<td>Male</td>
<td>Cable Splicer</td>
<td>Journey Work</td>
<td>8.25</td>
<td>$44.22</td>
<td>X</td>
</tr>
<tr>
<td>Cinnamon</td>
<td>Kenneth</td>
<td>A</td>
<td>3305</td>
<td>Clackamas</td>
<td>97015</td>
<td>CA - Caucasian (WI)</td>
<td>Male</td>
<td>Cable Splicer</td>
<td>Journey Work</td>
<td>10</td>
<td>$44.22</td>
<td>X</td>
</tr>
<tr>
<td>Heidrick</td>
<td>Kellen</td>
<td>N</td>
<td>6641</td>
<td>Tualatin</td>
<td>97062</td>
<td>CA - Caucasian (WI)</td>
<td>Male</td>
<td>Cable Splicer</td>
<td>Journey Work</td>
<td>10</td>
<td>$44.22</td>
<td>X</td>
</tr>
<tr>
<td>Garner</td>
<td>Eli</td>
<td></td>
<td>2511</td>
<td>Salem</td>
<td>97306</td>
<td>CA - Caucasian (WI)</td>
<td>Male</td>
<td>Cable Splicer</td>
<td>Journey Work</td>
<td>7.5</td>
<td>$44.22</td>
<td>X</td>
</tr>
</tbody>
</table>

By entering my name in the signature block below, I certify that the information contained in this report is true and accurate to the best of my knowledge, and that I am authorized to submit this report on behalf of this firm. I further agree that typing my name in the signature block and submitting this report using a password-protected e-mail account is the equivalent of a manual signature for the purposes of this report.

<table>
<thead>
<tr>
<th>25. SIGNATURE</th>
<th>30. PRINT TITLE</th>
<th>31. DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Office Administrator</td>
<td>12-08-2017</td>
</tr>
</tbody>
</table>

BOX 1 NEEDS TO BE THE CONTRACTOR’S LEGAL NAME. OTHERWISE YOU WILL NOT GET CREDIT FOR SUBMITTING
On-The-Job Training (OJT) / Apprenticeship Program

- Develop skilled workforce
- Increase workforce diversity
- Support construction industry development needs
On-The-Job (OJT) / Apprenticeship Program Tracking

1. Form 734-2880 Training Program Approval Request (TPAR)

2. Form 734-2878 Apprentice/Trainee Approval Request (ATAR)

3. Form 734-2879 Apprentice/Trainee Monthly Progress Report (MPR)
Questions?
DBE Program Tools

• OCR Forms Page

• OCR’s DBE Webpage

• DBE Flow Diagram (see slide 12)

• LAG Manual, Section C, Chapter 8

• Special Provisions 2018
OCR Resources

Where to find...

OCR Homepage:

OCR Forms Page:
https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx

LAG Manual:

LPA A&E Requirements Guide:
https://www.oregon.gov/ODOT/Business/Procurement/DocsLPA/LpaAErequirements.pdf

Certification Homepage:
https://www.oregon.gov/ODOT/LocalGov/Pages/Certification.aspx
Contact Us

Region 2 Field Coordinator, Paul Joiner, 503-986-2834, Paul.B.JOINER@odot.state.or.us

DBE Program Manager, Codi Trudell, 503-986-4355, Codi.A.TRUDELL@odot.state.or.us

Small Business Programs Manager, Andrew Warren, 503-986-3016, Andrew.N.WARREN@odot.state.or.us

Title VI/EJ/ADA Programs Manager, David Morrissey, 503-986-3870, David.N.Morrissey@odot.state.or.us

OCR Office, (503) 986-4350, OCRInfoRequest@odot.state.or.us
Thank you!